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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

RONALD WINZELBERG, individually,
and on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

LIBERTY MUTUAL INSURANCE
COMPANY; and DOES 1 through 10,
inclusive,

Defendant.

CASE NO.: CV 07-460 GAF (JCx)

ASSIGNED FOR ALL PURPOSES TO:
Judge: Honorable Gary A. Feess
Courtroom: 740; Roybal Building

CLASS ACTION; and LABOR CODE
PRIVATE ATTORNEYS GENERAL
ACTION

[Class Action Pursuant to California
Code of Civil Procedure § 382; Labor
Code Private Attorneys General Action
Pursuant to California Code of Civil
Procedure § 2699 et seq.]

**[Proposed] First Amended Class
Action Complaint For:**

- (1) Violation of 29 U.S.C. § 207;
- (2) Violation of California Labor Code
§§ 510 and 1194;
- (3) Violation of California Labor Code
§ 226(a);
- (4) Violation of California Labor Code

§ 226.7(a);
 (5) Violation of California Labor Code
 §§ 221, 400-410, 2802 and 8 C.C.R. §
 11040;
 (6) Violation of California Labor Code
 §§ 201 and 202; and
 (7) Violation of California Business &
Professions Code § 17200, *et seq.*

Jury Trial Demanded

Plaintiff RONALD WINZELBERG (“WINZELBERG” or “Plaintiff”),
 individually and on behalf of all others similarly situated, and on behalf of the general
 public, alleges as follows:

JURISDICTION AND VENUE

1. This class action is brought pursuant to California Code of Civil
Procedure section 382. The monetary damages and restitution sought by Plaintiff
 exceeds the minimum jurisdictional limits of the Superior Court and will be
 established according to proof at trial.

2. This Court has original jurisdiction over the subject matter of this action
 pursuant to 28 U.S.C. §§ 1331-1332. The Court has supplemental jurisdiction over the
 state law claims pursuant to 28 U.S.C. § 1367. Plaintiff alleges, on information and
 belief, that the aggregate amount in controversy for this class action exceeds five
 million dollars (\$5,000,000.00) exclusive of interest and costs, that the class is greater
 than one-hundred (100) members, and that any one plaintiff is a citizen of a state
 different from that of any defendant. See Class Action Fairness Act (“CAFA”), Pub.
 L. 109-2, 119 Stat. 4 (2005). This Court has supplemental jurisdiction over Plaintiff’s
 state law claims pursuant to 28 U.S.C. § 1367(a).

THE PARTIES

1 12. Upon information and belief, Defendant is in the business of providing
2 investment banking, securities trading, and securities and insurance brokerage services.

3 13. Plaintiff is unaware of the true names or capacities of each defendant sued
4 herein under the fictitious names DOES 1 through 10, but prays for leave to amend and
5 serve such fictitiously named defendant pursuant to California Code of Civil Procedure
6 section 474, once their names and capacities become known and ascertained.

7 14. Plaintiff is informed and believes, and thereon alleges, that DOES 1
8 through 10 are the partners, owners, shareholders or managers of Defendant, and were
9 acting on behalf of Defendant.

10 15. Plaintiff is informed and believes, and thereon alleges, that each of said
11 defendant is in some manner intentionally, negligently, or otherwise responsible for the
12 acts, occurrences and transactions alleged herein, and the intentional and/or negligent
13 conduct and/or fault of each fictitiously named defendant in some manner contributed
14 to the damages complained of herein.

15 16. Plaintiff is informed and believes, and thereon alleges, that each and all of
16 the acts and omissions alleged herein were performed by, or are attributable to,
17 Defendant, and that each fictitiously named Defendant acted as the agent for the other,
18 with legal authority to act on the other's behalf, in accordance with, and representation
19 of the official policy of, Defendant.

20 17. At all times herein mentioned, defendants, and each of them, ratified each
21 and every act or omission complained of herein. At all times herein mentioned,
22 defendants, and each of them, aided and abetted the acts and omissions of each and all
23 the other defendants in proximately causing the damages herein alleged.

24 18. Each reference in this Complaint to Defendant, Defendants, or a
25 specifically named defendant, also refers to all Defendants sued under fictitious names.

26 **COLLECTIVE ACTION ALLEGATIONS**

27 19. Plaintiff alleges that Defendant unlawfully failed to pay Plaintiff and other
28 California employees (hereinafter "California Class") overtime at one-and-one-half

1 times their regular rate as defined by the FLSA.

2 20. Plaintiff brings his First Claim for Relief for violation of the FLSA as a
3 collective action pursuant to Section 16(b) of the FLSA, 29 U.S.C. § 216(b), on behalf
4 of all California class members, defined in paragraph 11.

5 21. Plaintiff and the California Class members are similarly situated, and are
6 subject to Defendant's common practice, policy or plan of refusing to pay overtime in
7 violation of the FLSA

8 22. The First Claim for Relief for violations of the FLSA may be brought and
9 maintained as an "opt-in" collective action pursuant to Section 16(b) of the FLSA, 29
10 U.S.C. § 216(b), for all claims asserted by Plaintiff under FLSA, since Plaintiff's
11 claims are similar to the claims of the members for the California Class Plaintiffs.

12 23. The names and addresses of the California Class are available from
13 Defendant. Notice will be provided to the California Class via first class mail to the
14 last address known by their employer.

15 **CLASS ACTION ALLEGATIONS**

16 24. Plaintiff brings this action on his own behalf and on behalf of all other
17 persons similarly situated, and thus, seeks class certification under California Code of
18 Civil Procedure section 382.

19 25. The proposed class consists of, and is defined as:

20 All current and former sales representatives and trainees, or persons with
21 similar titles and/or similar job duties, who worked for Defendant in the State of
22 California at any time during the period commencing four years prior to the filing of
23 this Complaint to final judgment.

24 26. There is a well-defined community of interest in the litigation and the
25 class is easily ascertainable:

26 a. Numerosity: The class members, and each subclass, if any, are so
27 numerous that joinder of all class members would be unfeasible and not practicable.

28 The membership of the entire class is unknown to Plaintiff at this time. However, the

1 class is estimated to be greater than 100 individuals, and the identity of such members
2 is readily ascertainable by inspection of Defendant's employment records.

3 b. Typicality: Plaintiff is qualified to, and will, fairly and adequately
4 protect the interests of each class member, with whom he has a well-defined
5 community of interest and typicality of claims, as demonstrated herein. Plaintiff
6 acknowledges the obligation to make known to the Court any relationship, conflicts or
7 differences with any class member. Plaintiff's attorneys and the proposed class
8 counsel are versed in the rules governing class action discovery, certification, and
9 settlement. Plaintiff has incurred, and during the pendency of this action will continue
10 to incur, costs and attorney's fees, that have been, are, and will be necessarily
11 expended for the prosecution of this action for the substantial benefit of each class
12 member.

13 c. Adequacy: Plaintiff is qualified to, and will, fairly and adequately
14 protect the interests of each class member, with whom he has a well-defined
15 community of interest and typicality of claims, as demonstrated herein. Plaintiff
16 acknowledges that he has an obligation to make known to the Court any relationship,
17 conflicts or differences with any class member. Plaintiff's attorneys, the proposed
18 class counsel, are versed in the rules governing class action discovery, certification,
19 and settlement. Plaintiff has incurred, and during the pendency of this action will
20 continue to incur, costs and attorney's fees, that have been, are, and will be necessarily
21 expended for the prosecution of this action for the substantial benefit of each class
22 member.

23 d. Superiority: The nature of this action makes the use of class action
24 adjudication superior to other methods. This case involves one large corporate
25 employer (Defendant) and a large number of individual employees (Plaintiff and the
26 class members) with many relatively small claims with common issues of law and fact.
27 If each employee were required to file an individual lawsuit, the corporate Defendant
28 would necessarily gain an unconscionable advantage, as it would be able to exploit and

1 overwhelm the limited resources of each individual class member with its vastly
2 superior financial and legal resources. Requiring each class member to pursue an
3 individual remedy would also discourage the assertion of lawful claims by employees
4 who would be disinclined to pursue an action against their present and/or former
5 employer for a justifiable fear of retaliation and permanent damage to their careers,
6 either at present and/or at subsequent employment. Proof of a common business
7 practice or factual pattern of which the named Plaintiff experienced, and that is
8 representative of the class mentioned herein, will establish the right of each class
9 member to recovery on the Causes of Action alleged herein. Class action will achieve
10 economies of time, effort, and expense as compared with separate lawsuits, and avoid
11 inconsistent outcomes because the same issues can be adjudicated in the same manner
12 for the entire class.

13 27. There are common questions of law and fact as to the class, and each
14 subclass, if any, that predominate over questions affecting only individual members,
15 including, but not limited to:

16 a. Whether Plaintiff and class members qualify for “exempt” status
17 under any applicable legal exemption;

18 b. Whether Defendant required Plaintiff and class members to work
19 over eight (8) hours per day and/or forty (40) hours per week, and failed to pay
20 overtime compensation earned by and owed to Plaintiff and class members;

21 c. Whether Defendant failed to pay the legally mandated minimum
22 wage to Plaintiff and class members for hours worked;

23 d. Whether Defendant properly complied with wage reporting
24 requirements;

25 e. Whether Defendant deprived Plaintiff and class members of meal
26 and/or rest periods and/or required Plaintiff and class members to work during meal
27 and/or rest periods without compensation;

28

1 f. Whether Defendant unlawfully collected or received from Plaintiff
2 and class members any part of wages previously paid to Plaintiff and class members;

3 g. Whether Defendant failed to promptly pay all wages due to
4 Plaintiff and class members upon their discharge or resignation;

5 h. Whether Defendant's conduct was willful;

6 i. Whether Defendant engaged in unfair business practices in
7 violation of Business & Professions Code section 17200, *et seq*;

8 j. The appropriate amount of compensatory damages resulting from
9 Defendant's violations of law;

10 k. The appropriate amount of monetary penalties resulting from
11 Defendant's violations of law; and

12 l. Whether Defendant is guilty of oppression, fraud, or malice, and
13 should be punished for the sake of example.

14 **FACTUAL ALLEGATIONS**

15 28. At all material times set forth herein, Defendant employed Plaintiff and
16 other persons as securities and insurance brokers or broker trainees in the State of
17 California.

18 29. Defendant employed, and continues to employ, Plaintiff and class
19 members as exempt workers at its various California business locations.

20 30. At all material times set forth herein, Defendant consistently failed to
21 properly pay regular and overtime wages to Plaintiff and class members.

22 31. Defendant knew or should have known that Plaintiff and class members
23 were not receiving proper regular or premium overtime wages, because, among other
24 things, Defendant's agents, officers and employees witnessed Plaintiff and class
25 members working hours entitling them to such wages and Defendant's own work
26 schedules indicate that these hours were worked.

27 32. Plaintiff is informed and believes, and thereon alleges, that at all material
28 times set forth herein, Defendant knew that it had a duty to compensate Plaintiff and

1 class members, and that Defendant had the financial ability to pay such compensation,
 2 but willfully, knowingly and intentionally failed to do so, solely to increase
 3 Defendant's profits.

4 33. California Labor Code section 218 states that nothing in Article 1 of the
 5 Labor Code shall limit the right of any wage claimant to "sue directly...for any wages
 6 or penalty due him under this article."

7 **FIRST CAUSE OF ACTION**

8 **Violation of 29 U.S.C. § 207**

9 **(Against Defendant LIBERTY MUTUAL)**

10 34. Plaintiff incorporates by reference and realleges, as if fully stated herein,
 11 the allegations set out in paragraphs 1 through 33 of this Complaint.

12 35. The Fair Labor Standards Act, 29 U.S.C. section 207(a)(1) ("FLSA"),
 13 provides, in relevant part, as follows:

14 Except as otherwise provided in this section, no employer shall
 15 employ any of his employees, who in any workweek is employed in
 16 an enterprise engaged in commerce or in the production of goods
 17 for commerce, for a workweek longer than forty hours unless such
 18 employee receives compensation for his employment in excess of
 19 the hours above specified at a rate not less than one and one-half
 20 times the regular rate at which he is employed.

21 36. At all material times set forth herein, Plaintiff and class members did not
 22 qualify for "exempt" status under the FLSA because, *inter alia*, they were not paid on
 23 a salary basis; their primary duties did not consist of office or nonmanual work directly
 24 related to the management or general business operations of Defendant or Defendant's
 25 customers; they did not exercise discretion and independent judgment with respect to
 26 matters of significance; and Defendant's businesses did not qualify as either "retail or
 27 service establishments."
 28

1 37. At all material times set forth herein, Plaintiff and class members
2 consistently worked in excess of forty hours in a workweek; however, Defendant failed
3 to pay proper overtime compensation to either.

4 38. At all material times set forth herein, Defendant's failure to pay Plaintiff
5 and class members the unpaid balance of overtime compensation, as required by the
6 FLSA, violated the provisions of the FLSA and was therefore unlawful.

7 39. Pursuant to the FLSA, Plaintiff and class members are entitled to recover
8 their unpaid overtime compensation as well as interest, costs, and attorney's fees.

9 **SECOND CAUSE OF ACTION**

10 **Violation of California Labor Code §§ 510 and 1194**

11 **(Against Defendant LIBERTY MUTUAL)**

12 40. Plaintiff incorporates by reference and realleges, as if fully stated herein,
13 the allegations set out in paragraphs 1 through 39 of this Complaint.

14 41. California Labor Code section 510(a) provides, in relevant part, as
15 follows:

16 Eight hours of labor constitutes a day's work. Any work in excess
17 of eight hours in one workday and any work in excess of 40 hours
18 in any one workweek and the first eight hours worked on the
19 seventh day of work in any one workweek shall be compensated at
20 the rate of no less than one and one-half times the regular rate of
21 pay for an employee. Any work in excess of 12 hours in one day
22 shall be compensated at the rate of no less than twice the regular
23 rate of pay for an employee. In addition, any work in excess of
24 eight hours on any seventh day of a workweek shall be compensated
25 at the rate of no less than twice the regular rate of pay of an
26 employee.

27 42. California Labor Code section 515(a) provides, in relevant part, as
28 follows:

1 The Industrial Welfare Commission may establish exemptions from
2 the requirement that an overtime rate of compensation be paid
3 pursuant to Sections 510 and 511 for executive, administrative, and
4 professional employees, provided that the employee is primarily
5 engaged in the duties that meet the test of the exemption, customarily
6 and regularly exercises discretion and independent judgment in
7 performing those duties, and earns a monthly salary equivalent to no
8 less than two times the state minimum wage for full-time
9 employment.

10 43. At all material times set forth herein, Plaintiff and class members did not
11 qualify for "exempt" status under the California Labor Code because, *inter alia*, they
12 were not primarily engaged in the duties that meet any potential exemptions; they did
13 not customarily and regularly exercise discretion and independent judgment in
14 performing those duties; and they did not earn a monthly salary equivalent to no less
15 than two times the state minimum wage for full-time employment.

16 44. California Labor Code section 515(d) provides, in relevant part, as
17 follows: "for the purpose of computing the overtime rate of compensation required to
18 be paid to a nonexempt full-time salaried employee, the employee's regular hourly rate
19 shall be 1/40th of the employee's weekly salary."

20 45. California Labor Code section 1194(a) provides as follows:

21 Notwithstanding any agreement to work for a lesser wage, any
22 employee receiving less than the legal minimum wage or the legal
23 overtime compensation applicable to the employee is entitled to
24 recover in a civil action the unpaid balance of the full amount of his
25 minimum wage or overtime compensation, including interest
26 thereon, reasonable attorney's fees, and costs of suit.

27 46. At all material times set forth herein, Plaintiff and class members
28 consistently worked in excess of eight hours in one workday and/or 40 hours in any

1 one workweek; however, the proper overtime compensation was not paid by
2 Defendant.

3 47. Therefore, Plaintiff and class members are entitled to recover their unpaid
4 overtime compensation pursuant to California Labor Code section 510(a) at the rate
5 specified in California Labor Code section 515(d), plus interest, costs, and attorney's
6 fees.

7 48. Pursuant to California Labor Code sections 2699(f) and (g), Plaintiff and
8 all aggrieved employees of Defendant are entitled to recover civil penalties in the
9 amount of one hundred dollars (\$100) for each aggrieved employee per pay period for
10 the initial violation and two hundred dollars (\$200) for each aggrieved employee per
11 pay period for each subsequent violation, plus costs and attorney's fees, for violations
12 of Labor Code sections 510 and 1194.

13 **THIRD CAUSE OF ACTION**

14 **Willful Violation of California Labor Code § 226(a)**

15 **(Against Defendant LIBERTY MUTUAL)**

16 49. Plaintiff incorporates by reference and realleges, as if fully stated herein,
17 the allegations set out in paragraphs 1 through 48 of this Complaint.

18 50. California Labor Code section 226(a) provides that every employer shall,
19 semimonthly or at the time of each payment of wages, furnish each employee, either as
20 a detachable part of the check, draft, or voucher paying the employee's wages, or
21 separately when wages are paid by personal check or cash, an accurate itemized
22 statement in writing showing (i) gross wages earned; (ii) total hours worked by the
23 employee, except for an employee whose compensation is based solely on a salary and
24 who is exempt from the payment of overtime; (iii) the number of piece rate units
25 earned and any applicable piece rate if the employee is paid on a piece rate basis; (iv)
26 all deductions; (v) net wages earned; (vi) the inclusive dates of the period for which the
27 employee is paid; (vii) the name of the employee and his or her social security number;
28 (viii) the name and address of the legal entity that is the employer; and (ix) all

1 applicable hourly rates in effect during the pay period and the corresponding number
2 of hours worked at each hourly rate by the employee.

3 51. At all material times set forth herein, Defendant either recklessly or
4 intentionally failed to make, keep and preserve true, accurate, and complete records of,
5 among other things, the actual number of hours worked each workday and each
6 workweek by Plaintiff and class members.

7 52. Plaintiff is informed and believes, and thereon alleges, that Defendant
8 systematically and intentionally under-reported the number of hours worked by
9 Plaintiff and class members, resulting in widespread under-compensation for labor
10 performed by Plaintiff and class members.

11 53. Plaintiff is informed and believes, and thereon alleges, that Defendant
12 systematically and intentionally caused a wage rate to be represented on the employee
13 check stubs that did not correspond with the actual wage rate used to calculate
14 employee compensation.

15 54. Plaintiff is informed and believes, and thereon alleges, that Defendant
16 systematically and intentionally engaged in conduct designed to conceal the under-
17 reporting of hours and the incorrect wage reporting from Plaintiff and class members.

18 55. Defendant's conduct as alleged herein is violates California Labor Code
19 section 226(a).

20 56. Plaintiff and class members are each entitled to recover from Defendant
21 the greater of their actual monetary damages caused by Defendant's failure to comply
22 with California Labor Code section 226(a), or an aggregate penalty not exceeding four
23 thousand dollars (\$4,000.00) and an award of costs and reasonable attorney's fees
24 pursuant to California Labor Code section 226(e).

25 57. Pursuant to California Labor Code sections 2699(f) and (g), Plaintiff and
26 all aggrieved employees of Defendant are entitled to recover civil penalties in the
27 amount of one hundred dollars (\$100) for each aggrieved employee per pay period for
28 the initial violation and two hundred dollars (\$200) for each aggrieved employee per

1 pay period for each subsequent violation, plus costs and attorney's fees, for violations
2 of Labor Code section 226(a).

3 **FOURTH CAUSE OF ACTION**

4 **Violation of California Labor Code §226.7(a)**

5 **(Against Defendant LIBERTY MUTUAL)**

6 58. Plaintiff incorporates by reference and realleges, as if fully stated herein,
7 the allegations set out in paragraphs 1 through 57 of this Complaint.

8 59. The applicable Industrial Welfare Commission ("IWC") Wage Order and
9 California Labor Code section 226.7(a) provide that employees cannot be required to
10 work in excess of four hours without receiving a ten minute rest period, nor can they
11 be required to work in excess of five hours without receiving a meal period of not less
12 than 30 minutes.

13 60. At all material times set forth herein, Defendant required Plaintiff and
14 class members to work in excess of four hours without providing a ten minute rest
15 period.

16 61. At all material times set forth herein, Defendant required Plaintiff and
17 class members to work an additional four hours without providing a second ten minute
18 rest period.

19 62. At all material times set forth herein, Defendant required Plaintiff and
20 class members to work for periods longer than five hours without a meal period of not
21 less than 30 minutes.

22 63. At all material times set forth herein, Defendant required Plaintiff and
23 class members to work during meal periods and failed to compensate Plaintiff and
24 class members for work performed during meal periods.

25 64. At all material times set forth herein, Defendant required Plaintiff and
26 class members to work during rest periods and failed to compensate Plaintiff and class
27 members for work performed during rest periods.

28

65. Defendant's conduct violates the applicable IWC Wage Order, and therefore violates California Labor Code section 226.7(a).

66. Plaintiff and class members are each entitled to recover from Defendant one hour compensation per missed meal break and/or rest period as premium pay, and not as a penalty.

67. Pursuant to California Labor Code sections 2699(f) and (g), Plaintiff and all aggrieved employees of Defendant are entitled to recover civil penalties in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorney's fees, for violations of Labor Code section 226.7.

FIFTH CAUSE OF ACTION

Violation of California Labor Code §§ 221, 400-410, 2802 and 8 C.C.R. § 11040 (Against Defendant LIBERTY MUTUAL)

68. Plaintiff incorporates by reference and realleges, as if fully stated herein, the allegations set out in paragraphs 1 through 67 of this Complaint.

69. California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages previously paid by the employer to the employee.

70. California Labor Code section 2802(a) provides as follows:

An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

1 71. California Labor Code sections 400–410 provide that an employer may
2 not deduct from or reduce an employee’s wages for the purpose of shifting the
3 employer’s ordinary costs of doing business to the employee.

4 72. California Code of Regulations 8, section 11040(8) provides as follows:
5 No employer shall make any deduction from the wage or require any
6 reimbursement from an employee for any cash shortage, breakage, or
7 loss of equipment, unless it can be shown that the shortage, breakage,
8 or loss is caused by a dishonest or willful act, or by the gross
9 negligence of the employee.

10 73. At all material times set forth herein, Defendant required Plaintiff and
11 class members to contribute to Defendant’s costs of doing business, including, but not
12 limited to compensating Defendant’s other employees (i.e. Sales Assistants) for the
13 labor necessary to complete the work; incurring expenses (including, but not limited
14 to, marketing, travel, overhead, office supplies and other expenses that are the
15 employer’s costs of doing business) in direct consequence of the discharge of class
16 members’ duties, or of their obedience to Defendant’s directions, which expenses have
17 not yet been reimbursed by Defendant; and being charged back commissions and/or
18 the actual value of losses allegedly caused by Plaintiff and class members as a result of
19 their simple negligence or through no fault of their own.

20 74. Thus, at all material times set forth herein, Plaintiff and class members
21 were forced to contribute to the capital and expenses of Defendant’s business, which
22 constitutes putting up a cash bond and must be refunded by Defendant to Plaintiff and
23 class members.

24 75. California Labor Code section 218.6 provides for interest specified in
25 California Civil Code section 3289(b), accruing from the date that the wages were due
26 and payable.

27 76. Therefore, Plaintiff and class members demand reimbursement for those
28 chargebacks deducted by Defendant against Plaintiff’s and the class members’ wages;

1 and reimbursement for the expenditures or losses incurred by Plaintiff and class
 2 members in direct consequence of the discharge of their duties, or of their obedience to
 3 Defendant's directions; plus return of all cash bonds or other coerced investments in
 4 Defendant's businesses, with interest at the statutory rate, and attorney's fees.

5 77. Pursuant to California Labor Code sections 2699(f) and (g), Plaintiff and
 6 all aggrieved employees of Defendant are entitled to recover civil penalties in the
 7 amount of one hundred dollars (\$100) for each aggrieved employee per pay period for
 8 the initial violation and two hundred dollars (\$200) for each aggrieved employee per
 9 pay period for each subsequent violation, plus costs and attorney's fees, for violations
 10 of Labor Code sections 221, 400-410, and 2802.

11 **SIXTH CAUSE OF ACTION**

12 **Violation of California Labor Code §§ 201 and 202**

13 **(Against Defendant LIBERTY MUTUAL)**

14 78. Plaintiff incorporates by reference and realleges, as if fully stated herein,
 15 the allegations set out in paragraphs 1 through 77 of this Complaint.

16 79. California Labor Code sections 201 and 202 provide that if an employer
 17 discharges an employee, the wages earned and unpaid at the time of discharge are due
 18 and payable immediately, and if an employee quits his or her employment, his or her
 19 wages shall become due and payable not later than 72 hours thereafter, unless the
 20 employee has given 72 hours previous notice of his or her intention to quit, in which
 21 case the employee is entitled to his or her wages at the time of quitting.

22 80. After Plaintiff's resignation, Defendant did not pay Plaintiff his earned
 23 wages within the required 72 hours. Indeed, Defendant still has not yet paid Plaintiff
 24 all his earned and unpaid wages to this day.

25 81. Plaintiff is informed and believes, and thereon alleges, that at all material
 26 times set forth herein, Defendant also failed to pay those class members who are no
 27 longer employed by Defendant their earned and unpaid wages at the time of discharge,
 28 or within 72 hours of their leaving Defendant's employ.

82. Defendant's failure to promptly pay Plaintiff and those class members who are no longer employed by Defendant their wages earned and unpaid at the time of discharge or resignation violated California Labor Code sections 201 or 202.

83. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with sections 201 and 202, any wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days.

84. Therefore, Plaintiff and class members are entitled to recover from Defendant the statutory penalty for each day they were not paid at their regular rate of pay up to a 30-day maximum pursuant to California Labor Code section 203.

85. Pursuant to California Labor Code sections 2699(f) and (g), Plaintiff and all aggrieved employees of Defendant are entitled to recover civil penalties in the amount of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation, plus costs and attorney's fees, for violations of Labor Code sections 201 and 202.

SEVENTH CAUSE OF ACTION

Violation of California Business & Professions Code § 17200, et seq.

(Against Defendant LIBERTY MUTUAL)

86. Plaintiff incorporates by reference and realleges, as if fully stated herein, the allegations set out in paragraphs 1 through 85 of this Complaint.

87. At all material times set forth herein, Defendant's conduct was unfair, unlawful, and harmful to Plaintiff, the class members, and the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of California Code of Civil Procedure section 1021.5.

88. Pursuant to California Business & Professions Code section 17200, et seq., Plaintiff and class members are entitled to restitution of the wages withheld,

1 deducted and/or retained by Defendant, and, losses and/or expenses unreimbursed or
2 charged by Defendant during a period that commences four years prior to the filing of
3 this Complaint; a permanent injunction requiring Defendant to pay all outstanding
4 monies due to class members; an award of attorney's fees pursuant to California Code
5 of Civil Procedure section 1021.5 and other applicable law, and costs.

6 **REQUEST FOR JURY TRIAL**

7 Plaintiff requests a trial by jury.

8 **PRAYER FOR RELIEF**

9 Plaintiff, individually and on behalf of all others similarly situated, prays for
10 relief and judgment against Defendant LIBERTY MUTUAL, as follows:

11 **Class Certification**

- 12 1. That this action be certified as a class action;
13 2. That Plaintiff be appointed as the representatives of the class;
14 3. That counsel for Plaintiff be appointed as class counsel;
15 4. That Defendant provide to class counsel, immediately upon its
16 appointment, the names and most current contact information (address and phone
17 numbers) of all class members.

18 **As to the First Cause of Action**

- 19 5. For general unpaid wages at overtime wage rates;
20 6. For pre-judgment interest on any unpaid overtime compensation from the
21 date such amounts were due;
22 7. For reasonable attorney's fees and for costs of suit incurred herein
23 pursuant to California Labor Code section 1194(a);
24 8. For such other and further relief as the Court may deem appropriate.

25 **As to the Second Cause of Action**

- 26 9. For general unpaid wages at overtime wage rates;
27 10. For pre-judgment interest on any unpaid overtime compensation from the
28 date such amounts were due;

1 11. For reasonable attorney's fees and for costs of suit incurred herein
2 pursuant to California Labor Code section 1194(a);

3 12. For all civil penalties and reasonable attorney's fees and costs of suit
4 incurred herein pursuant to California Labor Code sections 2699(f) and (g); and

5 13. For such other and further relief as the Court may deem appropriate.

6 As to the Third Cause of Action

7 14. For all actual damages, according to proof;

8 15. For statutory penalties pursuant to California Labor Code section 226(e);

9 16. For reasonable costs and attorney's fees pursuant to California Labor
10 Code section 226(e);

11 17. For all civil penalties and reasonable attorney's fees and costs of suit
12 incurred herein pursuant to California Labor Code sections 2699(f) and (g); and

13 18. For such other and further relief as the Court may deem appropriate.

14 As to the Fourth Cause of Action

15 19. For payments pursuant to California Labor Code section 226.7(b);

16 20. For costs of suit incurred herein;

17 21. For all civil penalties and reasonable attorney's fees and costs of suit
18 incurred herein pursuant to California Labor Code sections 2699(f) and (g); and

19 22. For such other and further relief as the Court may deem appropriate.

20 As to the Fifth Cause of Action

21 23. For unpaid wages;

22 24. For interest on all due an unpaid wages, accrued from the date that the
23 wages were due and payable, at the rate of interest specified in California Civil Code
24 section 3289(b), pursuant to California Labor Code section 218.6;

25 25. For costs of suit incurred herein;

26 26. For all civil penalties and reasonable attorney's fees and costs of suit
27 incurred herein pursuant to California Labor Code sections 2699(f) and (g); and

28 27. For such other and further relief as the Court may deem appropriate.

As to the Sixth Cause of Action

28. For statutory penalties pursuant to California Labor Code section 203 for Plaintiff and all other class members who have left Defendant's employ;

29. For reasonable attorney's fees;

30. For costs of suit incurred herein;

31. For all civil penalties and reasonable attorney's fees and costs of suit incurred herein pursuant to California Labor Code sections 2699(f) and (g); and

32. For such other and further relief as the Court may deem appropriate.

As to the Seventh Cause of Action

33. For restitution of unpaid wages, wrongful deductions and unreimbursed expenses taken from all class members and pre-judgment interest thereon;

34. For a permanent injunction ordering Defendant to pay required overtime rates for overtime hours worked to all securities and insurance brokers and broker trainees and ordering Defendant to discontinue the practice of passing on the costs of Defendant's doing business to its securities and insurance brokers and broker trainees;


35. For reasonable attorney's fees that Plaintiff and class members are entitled to recover under California Code of Civil Procedure section 1021.5;

36. For costs of suit incurred herein; and

37. For such other and further relief as the Court may deem appropriate.

Dated: April 18, 2008

Respectfully submitted,
Initiative Legal Group LLP

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